



Kittitas County
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use ONLY	
Received:	<div>DEPT. OF ECOLOGY Received SEP 05 2006 CENTRAL REGIONAL OFFICE</div>
Reviewed by: _____	
Date Reviewed: _____	

Applicant: Carl and Kay Drake

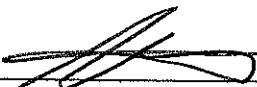
Application Number: KITT-06-07

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on August 15, 2006.

☒ **Approval:** The Kittitas County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on August 15, 2006, and submits this record of decision and report of examination to the Department of Ecology for final review.

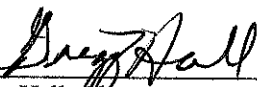
☐ **Denial:** The Kittitas County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on _____ and submits this record of decision to the Department of Ecology for final review.

Signed:



Pat Deneen, Chair
Kittitas County Water Conservancy Board

Date: 8/31/06
Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐



Gregg Hall, Alternate
Kittitas County Water Conservancy Board

Date: 8/31/06
Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Board Member
Kittitas County Water Conservancy Board

Date: _____
Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____
Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

(Name), (Title)
(Board Name) Water Conservancy Board

Date: _____
Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Mailed to the Department of Ecology Central Regional Office of Ecology, and other interested parties on _____

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040-105(03/03)

Record of Decision No. (WR Change App Number)



Kittitas County
WATER CONSERVANCY BOARD
Application for Change/Transfer

Report of Examination
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON



☒ Surface Water ☐ Ground Water

DATE APPLICATION RECEIVED 5/16/06	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) Ptn of 01279	WATER RIGHT PRIORITY DATE June 5, 1886	BOARD-ASSIGNED CHANGE APPLICATION NUMBER KITT-06-07
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NAME Carl and Kay Drake			
ADDRESS (STREET) 1000 Airport Road/P.O. Box 621	(CITY) Cle Elum	(STATE) WA	(ZIP CODE) 98922

Changes Proposed: ☐ Change purpose ☐ Add purpose ☒ Change point of diversion/withdrawal
x Add point of diversion/withdrawal x Change ownership of 1 acre of existing rights ☐ Other (Temporary, Trust, Interties, etc.)

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

DECISION HISTORICAL SUMMARY

Existing Right (Tentative Determination)

MAXIMUM CUB FT/ SECOND .08 cfs / .01 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 24.0	TYPE OF USE, PERIOD OF USE Irrigation (April 20 – September 30) / stock water				
SOURCE Yakima River			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO. 685135	¼ NE	¼ NW	SECTION 31	TOWNSHIP N. 20	RANGE 16	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED Tract 1, Airport Road Tracts, being a portion of the NE ¼ of the NW ¼ of Section 31, Township 20 N. Range 16 East W.M., Kittitas County, Washington.							
PARCEL NO. 685135	¼ NE	¼ NW	SECTION 31	TOWNSHIP N. 20 N.	RANGE, 16 EWM		

Proposed Use

MAXIMUM CUB FT/ SECOND .02 cfs / .0025	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 6 / .125	TYPE OF USE, PERIOD OF USE Irrigation (April 20 – September 30) / stock water				
SOURCE Yakima River			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO. 725135	¼ NW	¼ NW	SECTION 31	TOWNSHIP N. 20	RANGE 16 EWM	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED Tract 5 Airport Road Tracts, being a portion of the NE ¼ of the NW ¼ of Section 31, Township 20 N. Range 16 East W.M., Kittitas County, Washington.							
PARCEL NO. 725135	¼ NW	¼ NW	SECTION 31	TOWNSHIP N. 20	RANGE, 16 EWM		

Board's Decision on the Application

MAXIMUM CUB FT/ SECOND .02 cfs / .0025	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 6 / .125	TYPE OF USE, PERIOD OF USE Irrigation (April 20 – September 30) / stock water				
SOURCE Yakima River			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO. 725135	¼ NW	¼ NW	SECTION 31	TOWNSHIP N. 20	RANGE 16 EWM	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED Tract 5 Airport Road Tracts, being a portion of the NE ¼ of the NW ¼ of Section 31, Township 20 N. Range 16 East W.M., Kittitas County, Washington.							
PARCEL NO. 725135	¼ NW	¼ NW	SECTION 31	TOWNSHIP N. 20	RANGE, 16 EWM		

DESCRIPTION OF PROPOSED WORKS

Pump, Conveyance Lines, and Sprinklers.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:
October 30, 2006

COMPLETE PROJECT BY THIS DATE:
March 31, 2007

COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:
April 30, 2007

REPORT

See WAC 173-153-130 - The following sections may be expanded onto additional pages.

BACKGROUND

The original water right was examined and confirmed under Court #01279 in the matter of Ecology v. Acquavella et. al. Yakima County Superior Court Cause #77-2-01484-5. That matter adjudicated a right to Pat and Carolyn Merritt in a diversion quantity of .08 cubic feet per second total quantity of 24 acre feet per year, for irrigation, and .01 cfs, .5 acre feet per year for stock water. The priority date of the claim was June 5, 1886, and the confirmation was found in regards to Subbasin 5 (Elk Heights) on page 151 of the Supplemental Report of Referee.

ATTRIBUTES OF THE WATER RIGHT AS CURRENTLY DOCUMENTED:

The existing point of diversion is located on the Younger Ditch within Tract 1 at two different locations represented by pumps. The reduction in the diversion quantity for Tract 1 being conveyed to Tract 5 owned by the Drakes would be reduced by the .08 cfs and the 6 acre feet per year being transferred. The Younger Ditch runs along the north boundary of Tract 5 belonging to the Drakes, and the point of diversion would be located in the extreme northwest corner of the Drake property bordering the Younger Ditch. The Younger Ditch has as its source of water the Yakima River which diversion is located approximately near the center of Section 36, Township 20 North, Range 16 East, W.M., on the north bank of said river. The ditch runs north through Section 25 and into Section 30, 31, 32, and 33, and then continues east thereafter.

TENTATIVE DETERMINATION OF WATER RIGHT:

The tentative determination of the water right is provided on the front page of this report.

The evidence indicates that the water right has been consistently and regularly used every year since the confirmation of this water right as contained in the Report of Referee and Supplemental Report of Referee for Subbasin 5 and for years before. The water right does not appear to have been relinquished or abandoned.

HISTORY OF WATER USE:

The history of the Younger Ditch is contained on pages 7 through 10 of the Report of Referee for Subbasin 5, dated July 7, 1997. The historical information contained therein is incorporated by this reference as though fully set forth herein. Testimony of historic use and Exhibit C shows usage north and south of Younger Ditch. The usage south appears to be one acre.

The water right appears to have been consistently and regularly used and relinquishment does not appear to have occurred in regards to the water right 01279.

PREVIOUS CHANGES:

There does not appear to be any previous change to this water right as confirmed in the Supplemental Report of Referee page 80.

SEPA:

The board has reviewed the proposed project in its entirety and has indicated that the application does not have any probable significant or adverse environmental impacts. This requested change of point of diversion and place of use is exempt and no EIS is required under RCW 43.21C.030(2)(c).

COMMENTS AND PROTESTS

The Board took testimony of Carl Drake and Carolyn Merritt, the parties involved in the transfer of the water right. Carolyn Merritt, the current owner of the water right, testified that the water right had been fully and completely used for many, many years, going back to the date of their first occupancy in 1977. The water right has been used each and every year thereafter, including the current 2006 irrigation season.

Carl Drake testified on behalf of the party seeking the transfer and change in regards to the area to be irrigated which would run along the west boundary of his property down to an area north of the lake contained on a part of his legal description. The one acre would include trees and other areas south of the current residence. Mr. Drake admitted a map and aerial photograph showing the area proposed to be irrigated within Tract 5 of his legal description.

There were no written comments received other than those in association with the application. There was no testimony received in opposition or against the proposed change, and there were no issues raised in regards to any negative impacts to the proposed change of the point of diversion and place of use as reflected in the application.

The applicant published the Notice of the original application on June 12 and June 19, 2006. A copy of the publication is attached as Exhibit A. The Board received no written comments adverse to the application as a result of the notices and publications.

INVESTIGATION

The Board investigated at the request of the applicant the proposed change of point of diversion and change of place of use as reflected in the application and made a physical inspection of the proposed points of diversion and place of use on Tract 5 on Monday, August 14, and Tuesday, August 15, 2006. The Board inspected both the present point of diversion as well as the proposed place of use and found the physical environment consistent with the representations made in the application and as presented by all parties.

The water rights associated with the current and proposed diversion are the same water rights affirmed by the Referee in the Acquavella matter in the Subbasin 5 (Elk Heights) as has been referred to by the Court in the Conditional Final Order for Subbasin 4 (Swauk) confirming to the Merritts .08 cfs, 24 acre feet per year irrigation for 4 acres and stock water at .01 cfs and .5 acre feet per year. A copy of page 80 of the Supplemental Report of Referee for Subbasin 5 (Elk Heights) is attached hereto and marked **Exhibit B**. **Exhibit C** is a map of the airport tracts.

There are existing water rights between the proposed point of withdrawal and the existing place of use, which is approximately 1,250 feet west, along the Younger Ditch. The new proposed point of diversion for a portion of this water right is west of the existing point of diversion. This change will not affect existing points of diversion between those two points. Testimony supports the fact that sufficient water has always existed at the most downstream diversion, therefore, moving this small quantity will not affect existing diversions. There was no testimony against the requested change.

Therefore, there will be no adverse affect on any existing water rights by the change of point of diversion and place of use. This change will also not affect the total water quantity available within the Yakima River; the total amount diverted by the Younger Ditch from the Yakima River will not change as a result of the proposed change of point of diversion and place of use.

There will be no affect on any other water rights within the Yakima Subbasin as a result of this proposed change of point of diversion and place of use. The owner, Merritt, has continually used the water right in a manner consistent with the guidelines and requirements of the Acquavella court and as represented by the court's findings therein.

There was no geologic, hydrologic, or other scientific investigation that was necessary to confirm the Board's conclusions.

The Board finds that a valid water right exists in the full measure as originally claimed by Merritt and as represented by claim #01279, and that no part or portion of said right has been relinquished or abandoned.

CONCLUSIONS

Conclusion 1: Tentative Determination (Validity and Extent of the Right).

A valid water right exists for Pat and Carolyn Merritt, the owners of the water right for irrigation in the amount of .08 cfs diversion and 24 acre feet per year, total quantity, within Tract 1 Airport Road Tracts, being within the NE ¼ of the NW ¼ of Section 31, Township 20 N. Range 16 East W.M., Kittitas County, Washington. A stock water right exists for .01 cfs, .5 acre feet per year.

Conclusion 2: Relinquishment and Abandonment Concerns.

There has been no relinquishment or abandonment of this water right.

Conclusion 3: Hydrologic Analysis

There was no necessity for a hydrologic analysis because this change does not affect any other existing use, the quantity being diverted from the Younger Ditch from the Yakima River and does not affect total water quantity available within the Yakima River resulting from this change.

Conclusion 4: Consideration of Comments and Protests.

All comments received were in favor of the change of the point of diversion and place of use, and there were no protests or adverse testimony received.

Conclusion 5: Impairment.

No existing water rights are impaired or affected by the proposed change of point of diversion and place of use of a portion of the water right owned by the Merritts.

Conclusion 6: Public Interest.

The proposed transfer is authorized pursuant to RCW 90.03.380, and therefore there is no public interest consideration necessary.

OTHER: The Board also considered the previous provisions associated with the water right as identified in the Background section of this report when making its decision.

DECISION

The application for transfer of a portion of the Merritt water right 01279 involving the irrigation of 1 acre from the Merritt claim on Tract 1, Airport Road Tracts, to the Drakes, who own Tract 5 of Airport Road Tracts, is approved. The change of point of diversion is a westerly change of the point of diversion from the Younger Ditch with no intervening water rights being affected between the two points. The Merritts will retain three acres worth of water rights with the same points of diversion and places of use as approved by the Acquavella court in the Supplemental Report of Referee Subbasin 5 (Elk Heights) and water quantity and rights sufficient for 1 acre of irrigation will be transferred to the Drakes who live approximately 1,250 yards to the west of the Merritts.

This change of point of diversion and place of use of a portion of the Merritt water right of 01279 does not affect in any way the available water quantity in the Yakima River, the source of the Younger Ditch, and is a transfer of a valid existing, unrelinquished, and unabandoned water right.

The new point of diversion will be in the northwest corner of Tract 5 adjacent to the Younger Ditch which forms the north boundary of the Tract, and will be instituted by a pump and irrigation system applying the water through sprinklers. The property to be irrigated lies along the west boundary of Tract 5 into a larger area south of the residence and immediately north of a pond which is within the southern portion of the Drake property.

The proposed change of the point of diversion and place of use is consistent with the provisions of RCW 90.03.380, is in the public's interest, and does not affect the water resources of Kittitas County.

The Board's inspection confirmed the viability and propriety of this proposed transfer and the Board's decision approving it is supported by the testimony, the facts, and the on-site examination.

The Board's decision approves the transfer of a quantity of diversion of .02 cfs, for a total water quantity of 6 acre feet per year to be applied with the point of diversion in the northwest corner of Tract 5 adjacent to the Younger Ditch, and the place of use being Tract 5, Airport Road Tracts, total amount to be irrigated to be 1 acre. The period of use is April 20 – September 30, and the quantity of .0025 cfs, and .125 acre feet per year for stock water. The priority date of the water right transferred is June 5, 1886. The Merritt claim should be reduced, accordingly.

PROVISIONS AND CONDITIONS

Irrigation usage of April 20 – September 30, and stock water usage.

Mitigation:

None.

Construction Schedule:

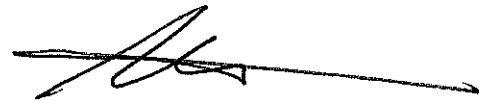
Project to be started October 30, 2006, and completed on or before March 31, 2007.

Other:

None.

Signed at Ellensburg, Washington

This 31st day of August, 2006.



Pat Deneen , CHAIRMAN
Kittitas County Water Conservancy Board

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For attachments not included or for more information please contact:

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